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contracts with a company by means of the same false representations, and who have sustained the same injury, except in amount, and seek precisely the same character of relief, may unite in one bill praying for the cancellation of their contracts, and make the offending company, and its officers and agents through whom the fraudulent representations were made, parties defendants.

THOMAS V. JONES.—Decided at Wytheville, July 8, 1897.—*Harrison, J.*

1. TAX TITLES—*Purchasers from auditor—Notice under Acts 1895-6, page 219.* The title acquired, in the manner required by law, by a purchaser of real estate which has been previously purchased in the name of the auditor for delinquent taxes can be defeated only by proof that the taxes or levies for which said real estate was sold were not properly chargeable thereon, or that such taxes and levies have been paid. Whether the notice required by Acts 1895-6, ch. 179, p. 219, to be served on the former owner or his personal representative, has been properly served or not is immaterial.

2. TAXES—*Lien superior to vendor's lien—Sec. 661 of Code.* Taxes on real estate, though assessed against a vendee subsequent to his purchase, have priority over the vendor's lien for purchase money. The provision of sec. 661 of the Code that "the right or title to such estate shall stand vested in the grantee in such deed as it was vested in the party assessed with the taxes or levies on account whereof the sale was made," refers to the character of the title which shall be vested in the grantee, whether it be a fee simple, or otherwise. The purchaser does not take it subject to the liens resting thereon at the time the taxes were assessed.

OSBORNE V. PULASKI LIGHT & WATER CO.—Decided at Wytheville, July 15, 1897.—*Harrison, J.*

1. STREETS—*Obvious obstructions—Duty of traveler.* Travelers along a public street have a right to assume that the street is in a reasonably safe condition, and are not required to keep their eyes on the pavement at every moment. But they are bound to use ordinary and reasonable care to avoid danger, and cannot recover for injuries inflicted by coming in contact with obstructions which are obvious to the most casual observer.

TARTER V. WILSON, ADMR. CATHERINE TARTER, AND OTHERS.—Decided at Wytheville, July 15, 1897.—*Buchanan, J.* Absent, *Riely, J.*

1. RES JUDICATA—*Second suit between the same parties—What not concluded.* In a second suit between the same parties or their privies a complainant, who was a defendant to the first suit, will not be estopped from asserting a claim which, though mentioned in a general way in his answer in the first suit, was not put in issue by the pleading in the first suit and which was not passed upon in the first suit and could not have been properly passed upon therein. Proving a case not made by the pleadings does not authorize the court to pass upon such extraneous matter, except by consent. In the case at bar the subject matter of the suit is not concluded by the proceedings in the first suit.